

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket Nos. 2015-088-01156C & 001157C

Parcel Nos. 24010-32028700 & 24010-32028800

Gail D. Peterson,

Appellant,

v.

Union County Board of Review,

Appellee.

Introduction

This appeal came on for telephone hearing before the Property Assessment Appeal Board (PAAB) on February 10, 2016. Gail Peterson was self-represented. Union County Assessor Theresa Pudenz represented the Board of Review.

Peterson is the owner of two separately parceled but attached commercial properties in Creston. The first property is a 4470-square-foot retail property located at 228-230 N Pine Street; also known as parcel number 24010-32028700. It is a one-story brick building built in 1962, with a full basement. The site is 0.129 acres.

The second property is a 4658-square-foot retail property located at 224-226 N Pine Street; also known as parcel number 24010-32028800. It is a one-story brick building built in 1880 and remodeled in 1980. It also has a full basement. The site is 0.129 acres.

The following chart summarizes the property's January 1, 2015, assessments.

		2015 Assessment		
Address	Parcel Number	Land	Improvements	Total
228-230 N Pine St	24010-32028700	\$5,640	\$89,780	\$95,420
224-226 N Pine St	24010-32028800	\$5,640	\$62,890	\$68,530

Peterson's protest to the Board of Review claimed the assessments were not equitable as compared with assessments of other like property and that the properties

were assessed for more than the value authorized by law under Iowa Code sections 441.37(1)(a)(1)(a-b). The Board of Review denied the petitions.

Peterson then appealed to PAAB. He asserts the assessment of each parcel should be \$30,000.

Findings of Fact

Peterson purchased the subject properties together in October 2014 for \$60,000, and believes \$30,000 is the correct fair market value for each. He explained the properties were marketed for roughly eighteen months and had an original combined list price of \$150,000. County Assessor Theresa Pudenz testified that in her opinion, the sale price did not reflect the fair market value of the properties because the sellers were not local and the property had been listed for a lengthy period prior to the sale. We note that neither of these circumstances are indicative that the sale was a non-arm's length transaction. However, because the transaction is the sale of adjoining parcels, it is not considered a normal transaction for assessment purposes.

Peterson explained that despite both properties having separate parcels, they have a common access to the basement area, which is under both structures. He also explained that in his opinion, the downtown Creston market has an excessive amount of vacancy which will likely result in lower rents in the future if tenants vacate the properties. .

Peterson testified he currently has three tenants. 224-226 Pine Street has two: a chiropractor office and a hair salon. The chiropractic office has several smaller rooms for its business, as well as a bathroom and kitchen area. 228-230 Pine Street has the third tenant: a kickboxing studio. Peterson noted that when he purchased the properties each building had two tenants. However shortly after the purchase, the kickboxing studio expanded and remodeled the space.

Pudenz also testified the Board of Review inspected the properties and noted remodeling, specifically of 230 Pine Street, which included updated locker rooms with bathrooms, showers, lockers, and a sauna room. Peterson agreed that the remodeling

has been started, but some of it remains unfinished; and in his opinion any remodeling that has taken place was repair work only.

Peterson also submitted four properties on his petition to the Board of Review as equity comparables, which are summarized in the following chart.

Equity Comparables	2015 Assessed Value
218 N Pine St	\$32,450
213 N Pine St	\$31,670
212 N Maple St	\$37,883
210 N Maple St	\$24,430

Peterson did not submit any other information about these properties, and we are unable to determine if they are comparable. Moreover, it is unknown if any of the properties recently sold and Peterson did not submit an opinion of market value, which is necessary to develop an assessment/sales ratio analysis to support an equity claim.

Pudenz testified that the Board did not consider the equity comparables submitted by Peterson because only one of them had a commercial classification like the subject property.

Finally, upon PAAB's order, Peterson submitted a Restricted Appraisal to the Board of Review, which was completed by Patrick Bodenhamer of Rally Appraisal, LLC, West Des Moines. Bodenhamer valued the subject properties at \$70,000 as a single unit as of September 2014. While we find the appraisal gives a helpful description and photos of the properties, we do not find it necessary to examine Bodenhamer's analysis because he valued the leased-fee, rather than the fee-simple, estate as required by Iowa law for ad valorem (assessment) valuation. The leased-fee interest is the value of the ownership interest subject to lessees; conversely, the fee-simple interest is the value of the absolute ownership unencumbered by any other interest. We therefore give it no consideration.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); see also *Hy-Vee0, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6)

that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

Peterson submitted four properties as equity comparables; however, there is insufficient information in the record to determine their comparability or to develop an assessment/sales ratio analysis to support an equity claim. The Board of Review asserts three of Peterson’s equity comparables were not commercially classified, which would render them incomparable to the subject properties.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property’s correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Peterson purchased the subject properties in October 2014 for \$60,000, combined. However, as previously noted, this was the sale of adjoining properties and would not be considered a normal sale for assessment purposes. See Iowa Code § 441.21(1)(b)(1). For this reason, the sales price alone is not a reliable indicator of market value for the 2015 assessment.

Peterson also submitted a Restricted Appraisal to the Board of Review and subsequently provided it to PAAB. However, the appraisal opines a value of the leased fee estate, rather than the market value of the fee simple estate. For this reason, we give the appraisal no consideration.

Based on the foregoing, we find Peterson has not met his burden of establishing the property is assessed inequitably or over-assessed.

Order

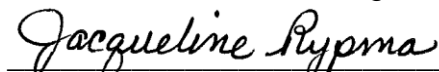
IT IS THEREFORE ORDERED that the Union County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

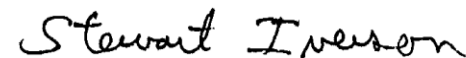
Dated this 17th day of March, 2016.



Karen Oberman, Presiding Officer



Jacqueline Rypma, Board Member



Stewart Iverson, Board Chair

Copies to:

Gail Peterson

Theresa Pudenz